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9

10 UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
12 EASTERN DIVISION

13 UNITED STATES OF AMERICA,
14 Plaintiff,
15 v.
16 JOSE ANGEL CARDONA-RAMIREZ,
17 Defendant.
18

Case CR No. ED 16-017-JGB

PLEA AGREEMENT FOR DEFENDANT JOSE
ANGEL CARDONA-RAMIREZ

19
20 1. This constitutes the plea agreement between JOSE ANGEL
21 CARDONA-RAMIREZ, also known ("aka") as "Junior", aka "Pollo", aka
22 "Nalgon", aka "Gordo" ("defendant"), and the United States
23 Attorney's Office for the Central District of California ("the
24 USAO") in the above-captioned case. This agreement is limited to
25 the USAO and cannot bind any other federal, state, local, or foreign
26 prosecuting, enforcement, administrative, or regulatory authorities.

27 DEFENDANT'S OBLIGATIONS

28 2. Defendant agrees to:

1 (1) At the earliest opportunity requested by the USAO and
2 provided by the Court, appear and plead guilty to the sole count of
3 the indictment in United States v. Jose Angel Cardona-Ramirez, Case
4 No. CR ED 16-017-JGB.

5 (2) Not contest facts agreed to in this agreement.

6 (3) Abide by all agreements regarding sentencing
7 contained in this agreement.

8 (4) Appear for all court appearances, surrender as
9 ordered for service of sentence, obey all conditions of any bond,
10 and obey any other ongoing court order in this matter.

11 (5) Not commit any crime; however, offenses that would be
12 excluded for sentencing purposes under United States Sentencing
13 Guidelines ("U.S.S.G." or "Sentencing Guidelines") § 4A1.2(c) are
14 not within the scope of this agreement.

15 (6) Be truthful at all times with Pretrial Services, the
16 United States Probation Office, and the Court.

17 (7) Pay the applicable special assessment at or before
18 the time of sentencing unless defendant lacks the ability to pay and
19 prior to sentencing submits a completed financial statement on a
20 form to be provided by the USAO.

21 ~~(8) Not bring a post-conviction collateral attack on the~~
22 conviction or sentence in this case.

23 (9) Not move to withdraw defendant's guilty plea in this
24 case.

25 THE USAO'S OBLIGATIONS

26 3. The USAO agrees to:

27 (1) Not contest facts agreed to in this agreement.
28

1 (2) Abide by all agreements regarding sentencing
2 contained in this agreement.

3 (3) At the time of sentencing, move to dismiss the
4 remaining counts of the indictment as against defendant, if any.
5 Defendant agrees, however, that at the time of sentencing the Court
6 may consider any dismissed charges in determining the applicable
7 Sentencing Guidelines range, the propriety and extent of any
8 departure from that range, and the sentence to be imposed.

9 (4) At the time of sentencing, provided that defendant
10 demonstrates an acceptance of responsibility for the offense up to
11 and including the time of sentencing, recommend a two-level
12 reduction in the applicable Sentencing Guidelines offense level,
13 pursuant to U.S.S.G. § 3E1.1, and recommend and, if necessary, move
14 for an additional one-level reduction if available under that
15 section.

16 (5) Not further criminally prosecute defendant for
17 violations of 8 U.S.C. § 1325 or § 1326(a) arising out of defendant
18 not being lawfully in the United States in the year 2016. Defendant
19 understands that the USAO is free to criminally prosecute defendant
20 for any other unlawful past conduct or any unlawful conduct that
21 occurs after the date of this agreement. Defendant understands that
22 he is still subject to deportation by the government and nothing in
23 this plea agreement prevents defendant from being deported by the
24 government from the United States. Defendant agrees that at the
25 time of sentencing the Court may consider the uncharged conduct in
26 determining the applicable Sentencing Guidelines range, the
27 propriety and extent of any departure from that range, and the
28

1 sentence to be imposed after consideration of the Sentencing
2 Guidelines and all other relevant factors under 18 U.S.C. § 3553(a).

3 NATURE OF THE OFFENSE

4 4. Defendant understands that for defendant to be guilty of
5 the crime charged in Count One, that is, possession with intent to
6 distribute marijuana, in violation of Title 21, United States Code,
7 Sections 841(a)(1), and 841(b)(1)(C), the following must be true:

8 (1) Defendant knowingly possessed marijuana; and

9 (2) Defendant possessed it with the intent to distribute
10 it to another person.

11 It does not matter whether the defendant knew that the
12 substance was marijuana. It is sufficient that the defendant knew
13 that it was some kind of a prohibited drug.

14 To "possess with intent to distribute" means to possess with
15 intent to deliver or transfer possession of the marijuana to another
16 person, with or without any financial interest in the transaction.

17 Under Title 18, United States Code, Section 2(a), "a defendant
18 who aids, abets, counsels, commands, induces or procures the

19 commission of an offense against the United States, is punishable as
20 a principal."

21 A defendant may be found to have committed possession with
22 intent to distribute marijuana, even if the defendant personally did
23 not commit the act or acts constituting the crime but aided and
24 abetted in its commission. The following are the elements for
25 aiding and abetting:

26 (1) The crime of possession with intent to distribute
27 marijuana was committed by someone;

1 (2) Defendant knowing and intentionally aided, counseled,
2 commanded, induced or procured that person to commit each element of
3 possession with intent to distribute marijuana; and

4 (3) Defendant acted before the crime was completed.

5 It is not enough that the defendant merely associated with the
6 person committing the crime, or unknowingly or unintentionally did
7 things that were helpful to that person, or was present at the scene
8 of the crime. The evidence must show beyond a reasonable doubt that
9 the defendant acted with the knowledge and intent to help that
10 person commit possession with intent to distribute marijuana.

11 The government is not required to prove precisely which
12 defendant actually committed the crime and which defendant aided and
13 abetted.

14 PENALTIES

15 5. Defendant understands that the statutory maximum sentence
16 that the Court can impose for a violation of Title 21, United States
17 Code, Sections 841(a)(1), and 841(b)(1)(C), and Title 18, United
18 States Code, Section 2(a), as charged in the sole count of the

19 Indictment, is: 20 years imprisonment; a lifetime period of
20 supervised release; a fine of \$1,000,000, or twice the gross gain or
21 gross loss resulting from the offense, whichever is greatest; and a
22 mandatory special assessment of \$100.

23 6. Defendant understands that the statutory mandatory minimum
24 sentence that the Court must impose for a violation of Title 21,
25 United States Code, Section 841(a)(1), and 841(b)(1)(C), and Title
26 18, United States Code, Section 2(a), is: a three-year period of
27 supervised release, and a mandatory special assessment of \$100.

28 7. Defendant understands that supervised release is a period

1 of time following imprisonment during which defendant will be
2 subject to various restrictions and requirements. Defendant
3 understands that if defendant violates one or more of the conditions
4 of any supervised release imposed, defendant may be returned to
5 prison for all or part of the term of supervised release authorized
6 by statute for the offense that resulted in the term of supervised
7 release.

8 8. Defendant understands that, by pleading guilty, defendant
9 may be giving up valuable government benefits and valuable civic
10 rights, such as the right to vote, the right to possess a firearm,
11 the right to hold office, and the right to serve on a jury.
12 Defendant understands that once the court accepts defendant's guilty
13 plea, it will be a federal felony for defendant to possess a firearm
14 or ammunition. Defendant understands that the conviction in this
15 case may also subject defendant to various other collateral
16 consequences, including but not limited to revocation of probation,
17 parole, or supervised release in another case and suspension or
18 revocation of a professional license. Defendant understands that
19 unanticipated collateral consequences will not serve as grounds to
20 withdraw defendant's guilty plea.

21 9. Defendant understands that under 21 U.S.C. § 862a,
22 defendant will not be eligible for assistance under state programs
23 funded under the Social Security Act or Federal Food Stamp Act or
24 for federal food stamp program benefits, and that any such benefits
25 or assistance received by defendant's family members will be reduced
26 to reflect defendant's ineligibility.

27 10. Defendant understands that, if defendant is not a United
28 States citizen, the felony conviction in this case may subject

1 defendant to: removal, also known as deportation, which may, under
2 some circumstances, be mandatory; denial of citizenship; and denial
3 of admission to the United States in the future. The court cannot,
4 and defendant's attorney also may not be able to, advise defendant
5 fully regarding the immigration consequences of the felony
6 conviction in this case. Defendant understands that unexpected
7 immigration consequences will not serve as grounds to withdraw
8 defendant's guilty plea.

9 FACTUAL BASIS

10 11. Defendant admits that defendant is, in fact, guilty of the
11 offense to which defendant is agreeing to plead guilty. Defendant
12 and the USAO agree to the statement of facts provided below and
13 agree that this statement of facts is sufficient to support a plea
14 of guilty to the charge described in this agreement and to establish
15 the Sentencing Guidelines factors set forth in paragraph 13 below
16 but is not meant to be a complete recitation of all facts relevant
17 to the underlying criminal conduct or all facts known to either
18 party that relate to that conduct.

19 On or about February 4, 2016, in Riverside County, within the
20 Central District of California, defendant knowingly and
21 intentionally aided and abetted others in their possession with
22 intent to distribute 616 kilograms of marijuana, a Schedule I
23 controlled substance. On February 4, 2016, in Riverside County,
24 California, at a lot, defendant knowingly and intentionally aided
25 and counseled others in their removal of marijuana from a boat which
26 was parked on the lot. For example, at the lot, defendant picked up
27 a large piece of plywood and placed it on a nearby scaffolding for
28 the purpose of giving shade to coconspirators who, defendant knew at

1 the time, were physically removing marijuana from the boat and
2 transporting this marijuana to another location in order for the
3 marijuana to be delivered to others. In addition, defendant knew
4 the plywood shielded these other coconspirators from being seen by
5 neighbors or law enforcement. Also, at the lot, while the marijuana
6 was being off loaded from the boat, defendant acted as a monitor for
7 the off loading as well as a look-out. Defendant agrees that his
8 offense conduct involved 616 kilograms of marijuana and occurred
9 before the crime was completed.

10 SENTENCING FACTORS

11 12. Defendant understands that in determining defendant's
12 sentence the Court is required to calculate the applicable
13 Sentencing Guidelines range and to consider that range, possible
14 departures under the Sentencing Guidelines, and the other sentencing
15 factors set forth in 18 U.S.C. § 3553(a). Defendant understands
16 that the Sentencing Guidelines are advisory only, that defendant
17 cannot have any expectation of receiving a sentence within the
18 calculated Sentencing Guidelines range, and that after considering
19 the Sentencing Guidelines and the other § 3553(a) factors, the Court
20 will be free to exercise its discretion to impose any sentence it
21 finds appropriate up to the maximum set by statute for the crime of
22 conviction. Defendant understands that defendant waives and gives up
23 any right to argue at sentencing, on appeal or on collateral review
24 about the applicability of the base offense level in the below
25 paragraph, even if this base offense level is subsequently modified
26 or changed by the U.S.S.G. or by federal statute or regulation.
27 Defendant agrees that facts support the Sentencing Guidelines
28 factor(s) below.

1 13. Defendant and the USAO agree to the following applicable
2 Sentencing Guidelines factor(s):

3 Base Offense Level: 26 [U.S.S.G. §§ 2D1.1(c)(7)]

4 Acceptance: -3 [U.S.S.G. § 3E1.1]¹

5 Defendant and the USAO agree not to seek, argue, or suggest in
6 any way, either orally or in writing, that any other specific
7 offense characteristics, adjustments, or departures relating to the
8 offense level be imposed. Defendant agrees, however, that if, after
9 signing this agreement but prior to sentencing, defendant were to
10 commit an act, or the USAO were to discover a previously
11 undiscovered act committed by defendant prior to signing this
12 agreement, which act, in the judgment of the USAO, constituted
13 obstruction of justice within the meaning of U.S.S.G. § 3C1.1, the
14 USAO would be free to seek the enhancement set forth in that
15 section. Defendant also understands that defendant's offense level
16 could be increased if defendant is a career offender under
17 U.S.S.G. §§ 4B1.1 and 4B1.2. If defendant's offense level is so
18 altered, defendant and the USAO will not be bound by the agreement
19 to Sentencing Guideline factors set forth above. The finding by the
20 Court that defendant qualifies as a career offender under
21 U.S.S.G. §§ 4B1.1 or 4B1.2 will not serve as a basis for defendant
22 to withdraw defendant's guilty plea.
23

24 _____
25 ¹ At the time of sentencing, provided that defendant
26 demonstrates an acceptance of responsibility for the offense up to
27 and including the time of sentencing, recommend a two-level
28 reduction in the applicable Sentencing Guidelines offense level,
pursuant to U.S.S.G. § 3E1.1, and recommend and, if necessary, move
for an additional one-level reduction if available under that
section.

1 14. Defendant and the government reserve the right to argue
2 for a sentence outside the sentencing range established by the
3 Sentencing Guidelines based on the factors set forth in 18 U.S.C.
4 § 3553(a)(1), (a)(2), (a)(3), (a)(6), and (a)(7).

5 15. Defendant understands that there is no agreement as to
6 defendant's criminal history or criminal history category.

7 WAIVER OF CONSTITUTIONAL RIGHTS

8 16. Defendant understands that by pleading guilty, defendant
9 gives up the following rights:

10 (1) The right to persist in a plea of not guilty.

11 (2) The right to a speedy and public trial by jury.

12 (3) The right to be represented by counsel - and if
13 necessary have the court appoint counsel - at trial. Defendant
14 understands, however, that, defendant retains the right to be
15 represented by counsel - and if necessary have the court appoint
16 counsel - at every other stage of the proceeding.

17 (4) The right to be presumed innocent and to have the
18 burden of proof placed on the government to prove defendant guilty
19 beyond a reasonable doubt.

20 (5) The right to confront and cross-examine witnesses
21 against defendant.

22 (6) The right to testify and to present evidence in
23 opposition to the charges, including the right to compel the
24 attendance of witnesses to testify.

25 (7) The right not to be compelled to testify, and, if
26 defendant chose not to testify or present evidence, to have that
27 choice not be used against defendant.

28 (8) Any and all rights to pursue any affirmative

1 defenses, Fourth Amendment or Fifth Amendment claims, and other
2 pretrial motions that have been filed or could be filed.

3 WAIVER OF APPEAL OF CONVICTION

4 17. Defendant understands that by pleading guilty defendant is
5 waiving and giving up any right to appeal defendant's conviction on
6 the offense to which defendant is pleading guilty.

7 WAIVER OF APPEAL OF SENTENCE

8 18. To that end, in addition to giving up his right to appeal
9 defendant's conviction, defendant gives up and waives any right to
10 appeal all of the following: (a) the procedures and calculations
11 used to determine and impose any portion of the sentence; (b) the
12 term of imprisonment imposed by the Court, provided it is within the
13 statutory maximum; (c) the fine imposed by the Court, provided it is
14 within the statutory maximum; (d) the term of probation or
15 supervised release imposed by the Court, provided it is within the
16 statutory maximum; and (e) all conditions of probation or supervised
17 release imposed by the Court, including, but not limited to, the
18 conditions set forth in General Orders 318, 01-05, and/or 05-02 of
19 this Court, the drug testing conditions mandated by 18 U.S.C.
20 §§ 3563(a)(5) and 3583(d), and the alcohol and drug use conditions
21 authorized by 18 U.S.C. § 3563(b)(7).

22 19. Defendant also gives up any right to bring a post-
23 conviction collateral attack on the conviction or sentence, except a
24 post-conviction collateral attack based on a claim of ineffective
25 assistance of counsel. For instance, defendant gives up any right
26 to bring a post-conviction collateral attack based on an explicitly
27 retroactive change in the applicable Sentencing Guidelines,
28 sentencing statutes, or statute of conviction.

1 20. The USAO gives up its right to appeal any sentence imposed
2 by the Court and the manner in which the sentence is determined,
3 provided that the sentence is at or above the statutory minimum and
4 at or below the statutory maximum specified above.

5 RESULT OF WITHDRAWAL OF GUILTY PLEA

6 21. Defendant agrees that if, after entering a guilty plea
7 pursuant to this agreement, defendant seeks to withdraw and succeeds
8 in withdrawing defendant's guilty plea on any basis (including, as a
9 result of a successful appeal or a successful post-conviction
10 collateral attack), then (a) the USAO will be relieved of all of its
11 obligations under this agreement; and (b) should the USAO choose to
12 pursue any charge or any allegation of a prior conviction for a
13 felony drug offense that was either dismissed or not filed as a
14 result of this agreement, then (i) any applicable statute of
15 limitations will be tolled between the date of defendant's signing
16 of this agreement and the filing commencing any such action; and
17 (ii) defendant waives and gives up all defenses based on the statute
18 of limitations, any claim of pre-indictment delay, or any speedy
19 trial claim with respect to any such action, except to the extent
20 that such defenses existed as of the date of defendant's signing
21 this agreement.

22 RESULT OF VACATUR, REVERSAL OR SET-ASIDE

23 22. Defendant agrees that if the count of conviction is
24 vacated, reversed, or set aside, both the USAO and defendant will be
25 released from all their obligations under this agreement, except
26 defendant is still bound by the obligations in paragraphs 21, 24 and
27 25.

1 EFFECTIVE DATE OF AGREEMENT

2 23. This agreement is effective upon signature and execution
3 of all required certifications by defendant, defendant's counsel,
4 and an Assistant United States Attorney.

5 BREACH OF AGREEMENT

6 24. Defendant agrees that if defendant, at any time after the
7 signature of this agreement and execution of all required
8 certifications by defendant, defendant's counsel, and an Assistant
9 United States Attorney, knowingly violates or fails to perform any
10 of defendant's obligations under this agreement ("a breach"), the
11 USAO may declare this agreement breached. All of defendant's
12 obligations are material, a single breach of this agreement is
13 sufficient for the USAO to declare a breach, and defendant shall not
14 be deemed to have cured a breach without the express agreement of
15 the USAO in writing. For instance, if defendant fails to plead
16 guilty as required by this agreement or fails to be sentenced
17 pursuant to such guilty plea, defendant will have breached the plea
18 agreement. If the USAO declares this agreement breached, and the

19 Court finds such a breach to have occurred, then: (a) if defendant
20 has previously entered a guilty plea pursuant to this agreement,
21 defendant will not be able to withdraw the guilty plea, and (b) the
22 USAO will be relieved of all its obligations under this agreement.

23 25. Following the Court's finding of a knowing breach of this
24 agreement by defendant, should the USAO choose to pursue any charge
25 in the indictment, or any charge or any allegation of a prior
26 conviction for a felony drug offense that was either dismissed or
27 not filed as a result of this agreement, then:

28 (1) Defendant agrees that any applicable statute of

1 limitations is tolled between the date of defendant's signing of
2 this agreement and the filing commencing any such action.

3 (2) Defendant waives and gives up all defenses based on
4 the statute of limitations, any claim of pre-indictment delay, or
5 any speedy trial claim with respect to any such action.

6 (3) Defendant agrees that: (i) any statements made by
7 defendant, under oath, at the guilty plea hearing (if such a hearing
8 occurred prior to the breach); (ii) the agreed to factual basis
9 statement in this agreement; and (iii) any evidence derived from
10 such statements, shall be admissible against defendant in any
11 action against defendant (including, but not limited to, in the
12 government's case-in-chief in the above-captioned case or any
13 related case), and defendant waives and gives up any claim under the
14 United States Constitution, any statute, Rule 410 of the Federal
15 Rules of Evidence, Rule 11(f) of the Federal Rules of Criminal
16 Procedure, or any other federal rule, that the statements or any
17 evidence derived from the statements should be suppressed or are
18 inadmissible.

19 COURT AND PROBATION OFFICE NOT PARTIES

20 26. Defendant understands that the Court and the United States
21 Probation Office are not parties to this agreement and need not
22 accept any of the USAO's sentencing recommendations or the parties'
23 agreements to facts or sentencing factors.

24 27. Defendant understands that both defendant and the USAO are
25 free to: (a) supplement the facts by supplying relevant information
26 to the United States Probation Office and the Court, (b) correct any
27 and all factual misstatements relating to the Court's Sentencing
28 Guidelines calculations and determination of sentence, and (c) argue

1 on appeal and collateral review that the Court's Sentencing
2 Guidelines calculations and the sentence it chooses to impose are
3 not error, although each party agrees to maintain its view that the
4 calculations above are consistent with the facts of this case.
5 While this paragraph permits both the USAO and defendant to submit
6 full and complete factual information to the United States Probation
7 Office and the Court, even if that factual information may be viewed
8 as inconsistent with the facts agreed to in this agreement, this
9 paragraph does not affect defendant's and the USAO's obligations not
10 to contest the facts agreed to in this agreement.

11 28. Defendant understands that even if the Court ignores any
12 sentencing recommendation, finds facts or reaches conclusions
13 different from those agreed to, and/or imposes any sentence up to
14 the maximum established by statute, defendant cannot, for that
15 reason, withdraw defendant's guilty plea, and defendant will remain
16 bound to fulfill all defendant's obligations under this agreement.
17 Defendant understands that no one -- not the prosecutor, defendant's
18 attorney, or the Court -- can make a binding prediction or promise
19 regarding the sentence defendant will receive, except that it will
20 be within the statutory maximum.

21 NO ADDITIONAL AGREEMENTS

22 29. Defendant understands that, except as set forth herein or
23 in other signed written agreement(s) with the government, there are
24 no promises, understandings, or agreements between the USAO and
25 defendant or defendant's attorney, and that no additional promise,
26 understanding, or agreement may be entered into unless in a writing
27 signed by all parties or on the record in Court.

28


PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

30. The parties agree that this agreement will be considered part of the record of defendant's guilty plea hearing as if the entire agreement had been read into the record of the proceeding.


AGREED AND ACCEPTED

UNITED STATES ATTORNEY'S OFFICE
FOR THE CENTRAL DISTRICT OF CALIFORNIA


EILEEN DECKER
United States Attorney


J. MARK CHILDS
Assistant U.S. Attorney

10/4/2016
Date


JOSE ANGEL CARDONA-RAMIREZ
Defendant

10/3/16
Date


Anthony E. Colombo, Jr.
Attorney for Defendant
JOSE ANGEL CARDONA-RAMIREZ

10/3/16
Date

CERTIFICATION OF DEFENDANT

This agreement has been read to me in Spanish, the language I understand best. I have had enough time to review and consider this agreement, and I have carefully and thoroughly discussed every part of it with my attorney. I understand the terms of this agreement, and I voluntarily agree to those terms. I have discussed the evidence with my attorney, and my attorney has advised me of my rights, of possible pretrial motions that might be filed, of possible defenses that might be asserted either prior to or at

trial, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. No promises, inducements, or representations of any kind have been made to me other than those contained in this agreement or in another signed written agreement(s) with the government. No one has threatened or forced me in any way to enter into this agreement. I am satisfied with the representation of my attorney in this matter, and I am pleading guilty because I am guilty of the charges and wish to take advantage of the promises set forth in this agreement, and not for any other reason.

X Jose Cardona-Ramirez
JOSE ANGEL CARDONA-RAMIREZ
Defendant

10/3/16
Date

CERTIFICATION OF INTERPRETER

I, Amaranta Sorzelli, am fluent in the written and spoken English and Spanish languages. I accurately translated this entire agreement from English into Spanish to defendant JOSE ANGEL CARDONA-RAMIREZ on this date.

Amaranta Sorzelli
INTERPRETER

10/3/16
Date

CERTIFICATION OF DEFENDANT'S ATTORNEY

I am JOSE ANGEL CARDONA-RAMIREZ's attorney. I have carefully and thoroughly discussed every part of this agreement with my client. Further, I have fully advised my client of his rights, of possible pretrial motions that might be filed, of possible defenses that might be asserted either prior to or at trial, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of relevant

1 Sentencing Guidelines provisions, and of the consequences of
2 entering into this agreement. To my knowledge: no promises,
3 inducements, or representations of any kind have been made to my
4 client other than those contained in this agreement or in another
5 signed written agreement(s) with the government; no one has
6 threatened or forced my client in any way to enter into this
7 agreement; my client's decision to enter into this agreement is an
8 informed and voluntary one; and the factual basis set forth in this
9 agreement is sufficient to support my client's entry of a guilty
10 plea pursuant to this agreement.

11
12 *A. Colombo*
13 Anthony E. Colombo, Jr.
14 Attorney for Defendant
JOSE ANGEL CARDONA-RAMIREZ

10/3/16
Date